

REMARKS**1. Power of Attorney / Change of Correspondence Address**

Please take note of the concurrently-filed Power of Attorney and Change of Correspondence Address, a copy of which accompanies this Response. All further correspondence should be directed to the address noted in the Power of Attorney and Change of Correspondence Address.

2. The Amendments and the Support Therefor

No claims are been canceled, nine new claims (12-20) have been added, and claims 1 and 4 have been amended to leave claims 1-20 in the application. No new matter has been added by the amendments or new claims, wherein:

- *Claims 1 and 4* have been amended to address the §112(2) rejections raised in the April 30, 2007 Office Action;
- *New Claims 12-20* find support in the original claims and application. To illustrate, note FIG. 1 with frame 3 (with wheels 10), stand 4, seat 6 and chair 7, and bearing 8.

Further comments regarding the new claims are set out below at Section 6.

3. Rejection of Claims 1-11 under 35 USC §112(2)

These rejections are believed to be obviated by the amendments to claims 1 and 4.

4. Rejection of Claims 1-6, 8, and 11 under 35 USC §102 in view of U.S. Patent 4,948,156 to Fortner

Kindly reconsider and withdraw the rejections. Anticipation under 35 U.S.C. §102(b) requires that each and every limitation recited by the claim be found in a single prior art reference, a condition which is not present here.¹ Claim 1 recites that when the seating device is “in the upper position, the seating device, and a patient sitting in the seating device, are inclined backwards relative to the lower position” and that “the seating device is continuously gradually tilted in the course of its curved movement in the vertical direction.” This feature is plainly not present in *Fortner*; see particularly FIGS. 1-4, which show that the body/seat harness 30 (discussed at column 6 lines 34-59) remains level, with the same orientation, at all times as the body/seat harness 30 is raised from the lower position to the upper position. It should further be apparent from the very purpose of the *Fortner* device – to assist in raising those who have lower body weakness from a sitting position to a standing position (see Abstract and Background sections) – that it would be undesirable to allow users to lean/tilt backwards, since they might then fall backwardly into the associated wheelchair to strike their backs/necks on the rear of the wheelchair (see particularly FIGS. 2-4). Note also *Fortner*’s use of knee and waist brace plates 10 and 20 (see FIG. 1 and column 5 lines 36-51) to help restrict the user in a vertical standing orientation when the body/seat harness 30 is in the upper position, with the body/seat harness 30 in the same orientation in the upper position as it is when in the lower position. This orientation would not be achievable unless the body/seat harness 30 is *not* inclined backwards.

¹ MPEP 2131. “To anticipate, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim” (*Brown v. 3M*, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001); see also *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 58 USPQ2d 1286, 1291 (Fed. Cir. 2001); *Sandt Technology Ltd. v. Resco Metal and Plastics Corp.*, 60 USPQ2d 1091, 1094 (Fed. Cir. 2001)). In addition, the reference must be enabling and describe the applicant’s claimed invention sufficiently to have placed it in possession of a person of ordinary skill in the field of the invention. *In re Paulsen*, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994); see also *In re Schreiber*, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997).

Thus, the foregoing limitations of claim 1 are not shown in *Fortner*, nor would any artisan modify *Fortner* to include the features of claim 1 owing to the aforementioned safety issues: there would be no benefit whatsoever to including the recited features in *Fortner*, and the recited features would merely enhance the possibility of patient injury. Also kindly note that while the rejection states that *Fortner* includes the noted features, the noted features are in no way apparent from *Fortner*, and the rejection is therefore incomplete and must be withdrawn. "The factual determination of anticipation requires the disclosure in a single reference of every element of the claimed invention. . . . It is incumbent upon the examiner to identify wherein each and every facet of the claimed invention is disclosed in the applied reference." *Ex parte Levy*, 17 USPQ2d 1461, 1462 (Bd. Pat. App. & Int. 1990), citing to *Lindemann Maschinenfabrik GmbH v. American Hoist and Derrick*, 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984); see also 37 CFR §1.104(c)(2).² Claim 1 and its dependent claims 2-11 are therefore submitted to be allowable.

Additionally, the elements of claims 4 and 5 do not appear to be present in *Fortner*: *Fortner* does not have a chair back which serves as a means for guiding the seating device between the lower and upper positions (as in claim 4), nor does *Fortner* include an element (which includes the back of a chair) along which the seating device is guided when moving between the lower and upper positions (as in claim 5).

5. Allowability of Claim 10

The indication that claim 10 contains allowable matter is noted and appreciated.

² "In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified."

6. New Claims 12-20

New independent claim 12 is submitted to be allowable because no art of record shows a seat movable between a lower position wherein the seat is oriented at least substantially horizontally and an upper position wherein the seat is inclined backwards relative to the lower position, and wherein the seat moves between the lower and upper positions along a path defined by a stand (wherein the stand is arched and is situated behind the seat).

New claims 13-16, dependent from claim 12, are submitted to be allowable for at least the same reasons as claim 12.

New independent claim 17 is submitted to be allowable because no art of record shows a bearing engaged between the seat and a stand (the stand being situated behind the seat), wherein the bearing engages at least one of the seat and the stand to allow movement of the seat with between a lower seat position wherein the seat is oriented at least substantially horizontally, and an upper seat position wherein the seat is inclined downwardly as it extends toward the stand.

New claims 18-20, dependent from claim 17, are submitted to be allowable for at least the same reasons as claim 17.

7. In Closing

If any questions regarding the application arise, please contact the undersigned attorney. Telephone calls related to this application are welcomed and encouraged. The Commissioner is authorized to charge any fees or credit any overpayments relating to this application to deposit account number 18-2055.

For the Applicant,



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ATTACHMENTS:

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